UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/407/Add.1
8 May 2002

Original: ENGLISH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Fourteenth periodic reports of States parties due in 2001

Addendum

BOTSWANA*

[1 March 2002]

* This document contains the sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth and fourteenth periodic reports of Botswana, due on 22 March 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999 and 2001 respectively, submitted in one document. For the third, fourth and fifth periodic reports of Botswana submitted in one document and the summary record of the meetings at which the Committee considered that report, see documents CERD/C/105/Add.1 and CERD/C/SR.654.

GE.02-41681 (E) 140602

Introduction

1. At its fifty-third session, the Committee on the Elimination of Racial Discrimination noted that the sixth, seventh, eighth, ninth, tenth, eleventh and twelfth reports of Botswana which were due by 22 March 1985, and on that date in the years 1987, 1989, 1991, 1993, 1995 and 1997, had not been submitted. The Committee decided that the Republic of Botswana should compile and submit the reports for those years in one consolidated document.

2. The Republic of Botswana:

(a) Confirms that it has both signed and ratified the above Convention;

(b) Affirms its utmost belief in the Convention as setting out minimum standards with which all must, without exception, comply;

(c) Has and will always unflinchingly adhere to the provisions of the Convention;

(d) Assures the Committee that the failure of Botswana to submit the reports for the aforementioned periods does not detract from Botswana's sincere belief in the ideals of the Convention, nor from Botswana's confidence in the Committee and the essential importance of its work. The failure, which is deeply regretted, results from an unfortunate oversight;

(e) Conveys its most profuse and profound apologies for the omission;

(f) Undertakes that in future it will ensure the timely submission of all biannual reports; and

(g) Is prepared to appear before the Committee if necessary to place on record its foregoing commitment to the Convention and the work of the Committee.

3. In accordance with article 9.1 of the International Convention on the Elimination of All Forms of Racial Discrimination ("the Convention"), Botswana hereby submits to the Secretary-General of the United Nations, for consideration by the Committee on the Elimination of Racial Discrimination, a consolidated report on the legislative, judicial, administrative and other measures which it has adopted to give effect to the provisions of the Convention.

General

4. Botswana is a landlocked country situated in southern Africa. It shares a border with Namibia in the west and north, Zambia in the north, Zimbabwe in the north-east and South Africa in the east and south. Botswana lies between longitudes 20 and 30 degrees east of Greenwich and between latitudes approximately 18 and 27 degrees south of the Equator. More than half of the country lies within the tropical zone north of the Tropic of Capricorn. Botswana has a land area of approximately 581,730 square kilometres.

5. The country can be divided into three main climatic regions. These are: the northern, eastern and western climatic regions. The northern climatic region comprises the area north of latitude 20 degrees south. This area has a tropical climate and receives much higher rainfall than other regions, about 500 to 700 mm per annum. Most of the rainfall results from migratory tropical systems such as the Inter-Tropical Convergence Zone (ITCZ). Other systems include easterly waves emanating from the south-west Indian Ocean and the Zaire Airmass Boundary (ZAB) which mainly affects the north-western parts. The eastern region is roughly the area south of latitude 20 degrees south and to the east of longitude 25 degrees east. It has a semi- and sub-tropical climate with rainfall varying from about 400 mm to about 500 mm, with pockets of lower long-term average rainfall of less than 350 mm. It is found in the low-lying extreme eastern part, between the Shashe and Limpopo rivers, which separates the highlands of Zimbabwe from those of South Africa. The western region covers the Kgalagadi, which is the driest part of the country with rainfall decreasing from the north to the south and with an annual average of less than 250 mm in the extreme south-west.

6. The population of Botswana is comparatively and generally homogeneous. However, there is significant diversity of language and culture.

7. Setswana is the national language and is spoken by over 96 per cent of the population. Setswana is used in schools and national mass media. English is the official and business language of the country and about 40 per cent of the population can read and speak it. There are several other languages spoken in the country, some of which are also written.

8. According to current estimates, the population of Botswana is about 1.7 million. The majority of the population live in rural areas along the eastern corridor in some of the largest traditional towns in southern Africa. The rest of the country, especially the western part, is sparsely populated. During the past three decades, Botswana has experienced a high degree of urbanization and has the highest annual rate of urban growth in Africa. The urban population accounts for about 25 per cent of the total population.

The Constitution, Penal Code, Societies Act and other laws[1]

9. The Constitution of Botswana provides for, inter alia:

A republican form of government headed by a President;

The three organs of government now characteristic of all modern civilized governments, viz. the legislature, the executive and the judiciary.

10. The legislature, which comprises the National Assembly and the President, is the supreme legislative authority of the Republic, and is subject only to the Constitution. The National Assembly refers all legislative measures which affect culture, custom and tradition to a House of Chiefs (House of Traditional Leaders) for their comment prior to the passage of such a measure.

---

[1] Copies are available for consultation in the files of the secretariat.

11. The executive branch consists of a Cabinet headed by a President. Under the terms of section 47 of the Botswana Constitution, all the executive authority of the Republic is vested, subject only to the Constitution, in the President, and the role of the Cabinet is to advise the latter. Ministers of Government do, however, exercise executive authority delegated to them by the President and by Acts of Parliament.

12. The judiciary, which is independent of both the executive and the legislature, interprets the law and administers justice. To be sure that litigants have the opportunity to ventilate their causes sufficiently, there is a multiple-tier court system comprising customary and civil courts. The customary courts are, progressively, the arbitration, lower and higher courts and the Customary Court of Appeal. Appeals lie through the hierarchy and, if a party is still not satisfied after the Customary Court of Appeal, it can thereafter appeal to the High Court and then the Court of Appeal. On the civil side are magistrates courts, the High Court and the Court of Appeal, the latter being the highest court in the land.

13. Chapter II of the Constitution of the Republic of Botswana incorporates a Bill of Rights, section 3 of which secures to the individual fundamental rights and freedoms identical to those enunciated in United Nations instruments. The preamble to section 3, which has been declared by the Court of Appeal (in Dow v. The Attorney-General[2]) to have substantive effect, guarantees equality and section 3 (a) the equal protection of the law to every person "whatever his race, place of origin, political opinion, colour, creed or sex". Section 15 proscribes discrimination on the grounds of "race, tribe, place of origin, political opinions, colour or creed".

14. For completeness, perhaps section 3 of the Constitution should be quoted in extenso. It provides:

> "Whereas every person in Botswana is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the public interest, to each and all of the following, namely
>
> (a) life, liberty, security of the person and the protection of the law;
>
> (b) freedom of conscience, of expression and of assembly and association; and
>
> (c) protection for the privacy of his home and other property and from deprivation of property without compensation.
>
> The provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

---

[2] Available for consultation in the files of the secretariat.

15. The Constitution makes provision, in section 12, for freedom of expression, which includes freedom of the press. These freedoms have, in practice, been fully realized. The development of the private press in Botswana started in the early 1980s when some weekly newspapers came on stream. The first three were the Botswana Guardian, the Examiner and the Reporter (Mmegi). The latter and the Botswana Guardian are still in circulation as weeklies, while the Examiner has closed down. Later came the Gazette published on Wednesdays followed by the Midweek Sun and Mmegi Monitor which are sister mid-weeklies to the Botswana Guardian and Mmegi respectively. Other newly established papers are the Voice and the Sunday Tribune. Numerous privately owned magazines have been in print and circulation for many years, and private radio stations are on the increase. Botswana also receives scores of foreign and international radio and television broadcasts, as well as newspapers. The Internet has completed Botswana's exposure to the whole world.

16. The Constitution also provides the legal framework within which an aggrieved individual may seek relief where the State infringes his rights. In this respect, it is apposite to refer to section 18 (1) of the Constitution, which provides that:

> "Subject to the provisions of subsection 5 of this section if any person alleges that any of the provisions of sections 3 to 16 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.
>
> "The High Court shall have original jurisdiction:
>
> "(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; or
>
> "(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) of this section;
>
> and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 16 (inclusive) of this Constitution."

17. In addition to the remedies afforded by section 18 of the Constitution, the Penal Code (cap. 08:01), and particularly sections 92 and 94, punish acts involving racial discrimination. These provisions, insofar as they are pertinent, read:

> "92 Any person who utters any words or publishes any writing expressing or showing hatred, ridicule or contempt for any person or group of persons wholly or mainly because of his race, tribe, place of origin, colour or creed is guilty of an offence and is liable to a fine not exceeding P500.00."
>
> "94 (1) Any person who discriminates against any other person shall be guilty of an offence and liable to a fine not exceeding P500 or to imprisonment for a term not exceeding six months, or both."

> "94 (2) For the purposes of this section a person discriminates against another if on the grounds of colour, race, nationality or creed he treats such person less favourably or in a manner different to that in which he treats or would treat any other person."

18. The occasion for invoking the provisions of the Convention need never arise as the Constitution of Botswana affords, as must be clear from the above, adequate protection for the individual. Because the Constitution is the supreme law of Botswana, it is inviolate, and any other law which offends against it will be declared unconstitutional and struck down as invalid and of no force and effect.

19. In the above ways, therefore, the Botswana Constitution, which was enacted on 30 September 1966, and laws passed before then anticipated the Convention (which entered into force on 4 January 1969). The provisions of the Convention have, in consequence, been given full effect in Botswana.

20. The Societies Act (cap. 26:04) and the Companies Act (cap. 42:01) and legislation governing other legal entities and regulating the registration and operation, inter alia, of such entities, prohibit discrimination of all forms by and within the entities.

Legislative, judicial, administrative and other measures effected in compliance with Part I (articles 2 to 7) of the Convention

Article 2

21. Botswana fully affirms the provisions of this article, and has and will always adhere to its requirements.

22. Botswana reviews, on a continuing basis, all its policies to ensure that they comply fully with the article.

23. Botswana is without laws which discriminate. Sections 3 and 15 of the Botswana Constitution, and 92 and 94 of the Penal Code outlaw racial discrimination, and section 18 of the Constitution and the foregoing sections of the Penal Code penalize it. All these provisions are quoted above. Provisions of the Societies Act, of the Companies Act and of other laws fulfil the requirements of article 2.1 (d).

24. Botswana's policies and practice achieve the objects of article 2.1 (e) and 2.2.

Article 3

25. Far from ever having laws which permitted racial segregation and apartheid, Botswana has, since she attained self-rule pursued a policy of non-racialism aimed, among other objects, at showing racist regimes the world over that people of different races could live peacefully together.

26. In the conduct of its diplomatic, economic and other relations, Botswana either avoided altogether or, where unavoidable, limited to the minimum, diplomatic, economic and other contacts with regimes which engaged in racial segregation or apartheid. Prime examples of this were Botswana's unrelenting refusal to have diplomatic relations with the then racist Rhodesia (now Zimbabwe), South Africa and the then South West Africa (Namibia). This, however, changed once these countries established multiracial democracy within their territories, for Botswana then established fully fledged diplomatic relations with all of them.

27. In the area of trade and commerce, Botswana was inextricably linked to apartheid South Africa. Botswana's very survival compelled upon a relationship it dreaded. The South African sea, air, road and rail systems are the most developed and reliable in the region, and all trade routes in southern Africa lead one way or the other to the South African system. The network is therefore of considerable importance to Botswana. Tens of thousands of Batswana worked in South Africa when Botswana's own employment capacity was severely limited. Historical ties between the black peoples of South Africa and Botswana prevented a complete break, and economic principles of sanity forced on Botswana an unavoidable trade with South Africa.

Article 4

28. Botswana always condemned racist propaganda and organizations. As a frontline State and a member of the Southern African Development Community and other regional and international bodies, Botswana participated in activities designed to eradicate all racist acts, and promoted the eradication of the scourge. The country subscribed to and ratified the Universal Declaration of Human Rights and this Convention.

29. The following laws, a few among many, meet the noble injunctions of article 4 (a), (b) and (c):

(a) Section 92 (1) of the Penal Code, quoted above, declares punishable by law all dissemination of ideas and acts of violence contemplated by article 4 (a), section 397 read with section 399 the advertisement of the same, and section 21 any assistance to those who commit these offences;

(b) Section 47 of the Penal Code gives to the President of Botswana the power, inter alia, to prohibit publication by anyone of material which, in his opinion, is contrary to the public interest. Section 48 provides an appropriate penalty for such publication. Section 49 empowers certain authorities to seize and dispose of such publications. It is undoubtedly the case that publication or dissemination of ideas of racial superiority or hatred or of racist material, as well as incitement to racial discrimination would, in a country with Botswana's Constitution, laws and policies, be contrary to the public interest;

(c) Section 7 (2) of the Societies Act, read with section 45 of the Interpretations Act (cap. 01:04) makes peremptory the refusal to register organizations which have, expressly or implicitly, racism and racial discrimination as their objects;

(d) Section 7 of the Companies Act (cap. 42:01) permits registration of companies with lawful purposes and denies registration of ones with an unlawful purpose. An entity is not a company unless it is registered as one;

(e) Section 4 of the Registration of Business Names Act (cap. 42:05) requires all business names to be registered, and the power of the Registrar to seek particulars prior to registration is predicated, inter alia, on the necessity for him to ascertain that only businesses with lawful purposes are given the imprimatur of the State through the act of registration. It may be that it is necessary for the Act to state so in explicit terms.

30. There are other pieces of legislation which establish or permit the establishment of all manner of entities. This would be done by way of some legislative or subsidiary legislative instrument passed by Parliament or other authorized body. The exercise of such authority would, of necessity, be subject to the Constitution, and therefore the prohibitions of sections 3 and 15 thereof. Should any such measure offend against these provisions, it would be unconstitutional for the reason that it would be ultra vires the authority given by the Constitution or other law, and certainly because it contravenes the sections aforementioned. It may be that each Act should prohibit the registration and operation of entities whose purposes involve racial discrimination.

31. The State, local authorities or other public authorities cannot legally practise racial discrimination by reason of the constitutional prohibitions aforementioned. It may be that each legislative measure should state so in express terms. They do not because it is understood by all that the predicate of the Constitution is unmistakable.

32. Accordingly, Botswana reports that the terms of article 4 are accomplished, our laws and measures being fully compliant therewith.

Article 5

33. All matters stated in respect of article 4 apply no less in the context of this article and are herein incorporated.

34. The sections of the Constitution hereinbefore recorded comply with the requirements of this article. In particular:

(a) The opening paragraph of section 3 provides the guarantees required by the opening paragraph of this article;

(b) Sections 3 (a), 7 and 10 secure the protections required by article 5 (a) and 5 (b); and

(c) Sections 3 (b), 11, 12, 13 and 67 secure the rights required by article 5 (c).

35. The following provisions of the laws of Botswana secure the enjoyment and protection of civil rights required by the corresponding provisions of this article:

(a) Section 14 (1) of the Constitution secures the rights contained in article 5 (d) (i) and 5 (d) (ii);

(b) The Citizenship Act (cap. 01:01) the right in article 5 (d) (iii);

(c) The Marriage Act (cap. 29:01) the right in article 5 (d) (iv);

(d) Sections 3 (c) and 8 of the Constitution and the company, partnership and other laws the rights prescribed by article 5 (d) (v);

(e) The Law of Inheritance Act (cap. 31:02), the Succession (rights of surviving spouse and family inheritance provisions) Act (cap. 31:03), the Wills Act (cap. 31:04), and the Roman-Dutch common law and Customary Laws of Botswana the rights given by article 5 (d) (vi);

(f) Sections 3 (b), 12, 13 and 14 of the Constitution the freedoms accorded by article 5 (d) (vii);

(g) Sections 3 (b) and 12 of the Constitution the freedoms extended by article 5 (d) (viii); and

(h) Sections 3 (b) and 13 of the Constitution the freedoms offered by article 5 (d) (ix).

36. The laws of Botswana extend and protect the economic, social and cultural rights. In particular, the following laws secure the rights stated below, as required by article 5 of the Convention:

(a) Section 6 of the Constitution, the Employment Act (cap. 47:01), the Employment of Non-Citizens Act (cap. 47:02), the Workmen's Compensation Act (cap. 47:03), the Trades Disputes Act (cap. 48:02), the Pensions Act (cap. 27:01), the Military Pensions Special Fund Act (cap. 27:02), the Pension and Provident Funds Act (cap. 27:03), the Public Service Act (cap. 26:01), the Specified Offices (Salaries and Allowances) Act (cap. 26:04) and the principles of Roman-Dutch common law secure the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, and to just and favourable remuneration;

(b) The Trade Unions and Employers' Organisation Act (cap. 48:01) the right contained in article 5 (e) (ii);

(c) The State Land Act (cap. 32:01), the Tribal Land Act (cap. 32:02), the Immovable Property (Removal of Restrictions) Act (cap. 32:08), the Deeds Registry Act (cap. 33:02), the Botswana Housing Corporation Act (cap. 74:03) give the right to housing. It may, however, be that legislative measures are required to give this right more directly and explicitly, although it must be qualified and controlled, and kept within the realm of reality and practicality;

(d) The Public Health Act (cap. 63:01), the Medical, Dental and Pharmacy Act (cap. 61:02), the Nurses and Midwives Act (cap. 61:03), the Mental Disorders Act (cap. 63:02), the Sleeping Sickness Act (cap. 63:02), the Habit-forming Drugs Act (cap. 63:04), the Atmospheric Pollution (Prevention) Act (cap. 65:03), the hospitals policy of the Ministry of Health and the clinics policy of the Ministry of Local Government, the old-age pension scheme of the Government, the destitute support scheme funded and administered by the Government, the veterans of war scheme funded and administered by the Government, the free provision of medical services by the Government and other government schemes secure the right to public health, medical care, social security and social services. Botswana is among the leading countries in Africa and the developing world in the provision of free and affordable qualitative medical care, social security schemes and social amenities, and has public health facilities within a short distance of every home;

(e) The Education Act (cap. 58:01) and the education policies and schemes of the Government assure the right to education and training. Botswana provides free primary, secondary and technical education and to some extent free university education to all its children. Education always gets one of the largest, when not the largest, slice of the budget cake. It is one of the priority investment areas for the country. Access to free education is available to all;

(f) Sections 3 (b), 11, 12, and 13 of the Constitution, the Societies Act and the cultural policy of the Government of Botswana give all the right to retain and practise their culture.

Article 6

37. Botswana has a dual legal system made up of Roman-Dutch law principles and the customary law system. Fundamental and indispensable to both systems is the ubi jus, ibi remedium principle. In the context of human rights and civil liberties, sections 3 to 15 of the Constitution guarantee these rights and liberties while section 18 of the Constitution and the various other laws referred to above afford protection and secure remedies to those who feel aggrieved by a violation of these rights and freedoms. As complete redress as is possible is available through the court systems already dealt with above.

38. To the credit of Botswana is, as is illustrated by the following table, the infrequency of complaints of racial discrimination. The table shows statistics of the number of cases tried involving the offence of expression of racial hatred in contravention of section 92 of the Penal Code during the period 1995-2000:

Crime	1995	1996	1997	1998	1999	2000
Expression of racial hatred	1	2	3	5	7	9

Article 7

39. The education system in Botswana is designed such that every school is open to all racial and ethnic groups. The interaction of these groups in schools and the teaching methods employed ensure that future relations between these groups are without prejudices which may lead to racial discrimination.

40. Botswana society is intolerant of racial discrimination. Having had to contend with racist regimes in the then South Africa, Rhodesia and South West Africa for a long time, and having interacted with people raised in those societies, Botswana was always determined to give due regard, in the formulation of education and land planning policy and other matters, to ensuring that race relations are normal. For example, in integrating foreign investors, the minorities and remote area dwellers into the mainstream of society, emphasis is placed on shared public amenities such as schools, medical facilities and utilities, as well as on mixed neighbourhoods so designed by settlement planners. Everyone, regardless of their ethnicity or race, is free to settle anywhere in the country within the parameter of the law and policy. This way, friendship, tolerance and understanding are developed among ethnic groups. This emphasis has paid off; hence the example afforded by the above statistics. The law was always a measure of last resort and it served purely as that.

41. Botswana, being a member of the United Nations and party to the Universal Declaration of Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination, has adopted adequate measures to ensure the propagation of the purposes and principles of the Charter of the United Nations and these noble instruments.

42. The constitutions of registered cultural groups and their organization of national cultural programmes transcend, in every respect, all forms of prejudice based on racial or ethnic factors. In this context, the following measures are, amongst others, in place to ensure the combat of any elements of discrimination:

(a) The constitutions of all cultural organizations must, in order for the organization to gain registration, be approved by a government department to ensure, inter alia, that the proposed activities of the organization have not, in any discernible way, racial aspects to them, or even undertones or overtones;

(b) The system whereby officials of the National Council for Culture and Sport and the Ministry staff may make unannounced calls at any cultural premises and functions, is also a helpful monitoring tool; and

(c) In selecting traditional troupes for State functions, the criteria adopted disregard any tribal or racial qualifications. In fact, the Ministry considers cultural diversity as a necessary factor for cultural enrichment.

43. The media also play an important vigilance role. Radio and newspapers (both government-run and independent) broadcast and carry articles espousing the undesirability of racism and racial practices. They follow up cases which sometimes lead to police investigation whenever reports of racial practices have been made.

44. Non-governmental organizations, which for the most part operate in the area of human rights, are sensitive to human rights breaches and disseminate information on equality of all before the law.

45. Whenever opportune, the Government publishes policy documents and statements addressing issues relating to racial or tribal discrimination. The latest one, which is currently under discussion, relates to the equality of tribes in the Constitution of Botswana.

46 Occasions such as Independence Day celebrations and the State of the Nation address are sometimes used to remind the nation of its commitment to and respect for the human rights and freedoms which are enshrined in the Constitution.

47 Botswana is committed to a human rights culture. Hence, she is signatory to a number of international instruments, including the African Charter on Human and Peoples' Rights.

48 In the continuous effort to promote the use of as many local languages as possible, investigations are ongoing to determine which language may be introduced in the school curriculum as an optional subject. Currently Setswana and English are offered as subjects.

Conclusion

49. Botswana has, in its determined effort to comply with article 9 of the Convention, achieved a great deal. Even so, Botswana recognizes that the monster of racism and racial discrimination, because it results from attitudes deeply ingrained and has been a way of life for many over centuries, is tenacious and cunning and will progressively transform itself into subtler forms. It becomes necessary, therefore, that the world should not allow itself to be lulled into complacency by such a transformation. We must keep vigil until the scourge has been completely and finally uprooted.

50. Botswana continues to strive to make improvements in its attempt to comply with the Convention. Certain areas require greater and more careful scrutiny, and efforts to devise desirable measures in those areas will continue to be made.